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Amendment

for securing each flexible finger end portion within said tubular hollow body.

CLAIM 2 (AMENDED). A massage device in accordance with claim 1, wherein:
each said flexible finger is resiliently deformable.

CLAIM 3 (AMENDED). A massage device in accordance with claim 1, wherein:
each flexible finger comprises a covering disposed on the tip of each free end.

CLAIM 4 (AMENDED). The massage device of claim 1, wherein:
said means comprises a solid insert member disposed in said tubular hollow body, for
retaining each said flexible finger end portion therein by compression force.

CLAIM 5. A massage device in accordance with claim 1, wherein:
each said covering comprises a soft, resilient plastic coating.

CLAIM 6. A massage device in accordance with claim 1, wherein:
each flexible finger comprises metal.

CLAIM 7. A massage device in accordance with claim 1, wherein:
each flexible finger comprises copper.

CLAIM 8. A massage device in accordance with claim 1, wherein:
said first end cap comprises an integrally formed solid end face and a peripheral tubular
wall, said peripheral tubular wall engaging said tubular hollow body.

CLAIM 9. A massage device in accordance with claim 1, wherein:
said second end cap comprises an integrally formed apertured end face and a peripheral
tubular wall, said second end cap peripheral tubular wall engaging said tubular hollow body.

CLAIM 10. A massage device in accordance with claim 1, wherein:
said second end cap comprises an integrally formed apertured end face and a peripheral
tubular wall, said second end cap peripheral tubular wall engaging said tubular hollow body.

CLAIM 11. A massage device in accordance with claim 1, comprising:
a first end cap secured to and closing the other end of said tubular hollow body.

REMARKS

Claims 1-14 are pending in the application.

Claims 10-14 stand withdrawn from consideration.

Claims 1-9 stand rejected.

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Claims 1-4 and 8 stand rejected under 35 U.S.C. 102 as anticipated by Lacey '365.

Claims 5, 6, and 8 stand rejected under 35 U.S.C. 103(a) as unpatentable over Lacey in view of Lin '050.

Claim 7 stands rejected under 35 U.S.C. 103(a) as unpatentable over Lacey in view of Beran '606.

By this amendment claims 5 and 6 have been canceled, claims 1, 2, 7, and 9 have been amended and new claims 15-21 have been added. Claim 1 incorporates the limitations of claims 5 and 6 and additional limitations. The amendments to claims 2, 7 and 9 have been made to clarify the language of the claims. Claims 15-21 have been added to point out additional features of the invention.

Attached hereto is a showing of the amendments that have been made to claims 1, 2, 7, and 9.

No new matter has been added by this amendment.

No additional fee is due since no independent claims have been added, and the total number of claims does not exceed 20.

The title is being amended to remove the word "Tingler". "The Tingler" is a registered trademark. The term "tingler" is not descriptive of the invention and therefore is being removed from the title of the invention.

The references applied by the Examiner have been carefully considered. The Examiner, at paragraph 3, states that the Lacey patent "shows a massage device comprising: a handle portion or hollow body (22), a plurality of resiliently deformable, bendable fingers (12) and a first end cap (24).

It is respectfully submitted that the so-called handle portion shown and described in Lacey does not include a hollow body or an apertured end cap that is affixed to a hollow body. The device of the Lacey patent forms a handle by connecting the wire fingers 12 together by simply twisting the loose ends of the wires and winding them together. (see col. 2, lines 32-37). Lacey utilizes a plastic sheath that is slipped over the free ends of the wire fingers as an end cap. (see col. 2, lines 35-37). Because Lacey teaches that the wires are secured by twisting, it is evident that the end cap is utilized to prevent injury to a user from the wire ends. Lacey is otherwise silent on construction of a handle.

In the drawing as originally filed in the Lacey application, it was more apparent that the construction of Lacey is one in which the ends of the wires are merely twisted together secured by a wire wound around the outside of the resulting twisted bundle. More specifically, Lacey does not show or teach the use of a hollow body handle to which an apertured end cap is affixed.

Claim 1 recites, inter alia, "said handle portion comprising a tubular hollow body, a second end cap secured to and closing one end of said tubular hollow body, said second end cap having an aperture therethrough, said plurality of flexible fingers extending through said aperture, each flexible finger of said plurality of flexible fingers including an end portion secured in said tubular hollow body;

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said handle portion further comprising means for securing each flexible finger end portion in said tubular hollow body." Lacey does not show or teach a tubular hollow body; Lacey does not show an apertured end cap secured to the tubular hollow body. Lacey teaches only covering the ends of the wires that are twisted together.

In addition, claim 1, further recites: "said handle portion further comprising means for securing each flexible finger end portion within said tubular hollow body." At no place does Lacey show, teach or even suggest any type of means for securing each flexible finger end portion in a hollow body. In contrast Lacey teaches the use of a plastic end cap that is not used to secure the flexible fingers, but rather is used to "make handle 22 easier to grip".

Accordingly, the Lacey reference does not show teach or make obvious applicant's novel structure of claim 1. The remaining claims all depend from claim 1 and add additional structure. For the same reason that claim 1 is not shown, taught or made obvious by Lacey, claims 2-4, 7-9, and 15-21 are likewise not shown, taught or made obvious by Lacey.

The Examiner in his rejection of claims 5, 6, and 9 states that Lacey does not show the particulars of the handle, and applies the Lin patent to fill the voids in the teachings of Lacey. The Examiner states that "Lin shows a similar device including fingers (1), a hollow body (2) and first end cap (3), but further showing a second end cap (11) and solid insert member (12)."

It is respectfully submitted that Lin does not fill the voids in the teachings of Lacey to meet the structure of applicant's invention as claimed. Lin shows a combination slapping device and a massage device. The massage device 3 is stored in a handle 2. The slapping device aspect includes slapping bars 1 arranged in a bundle that are "securely held in a seat 11 by a punching... The seat 11 includes a first end to which the end of the bundle of slapping bars is securely attached and a threaded second end 12." (col. 2, lines 2-10). Seat 11 is not a handle, nor is it a hollow tubular body.

It is not apparent from the written description or the drawing how the slapping bars 1 are secured in seat 11. However, it is apparent that the slapping bars 1 do not extend beyond seat or sleeve 11 into hollow body 2. In fact, because the massage device 3 is stored in handle 2, it is not possible for the slapping bars 1 to extend into the handle 2. Lin does not show an apertured end cap, nor does Lin show the ends of the slapping bars extending into the handle and secured to the handle. Accordingly this structure does not meet the structural limitations of claim 1 of applicant's novel invention, and in fact teaches away from the structure of applicant's invention.

Nothing in any of the references suggests that they may be combined as suggested by the Examiner. Even if the references are so combined, the combined teachings do not teach or make obvious applicant's novel structure. It is respectfully submitted that the references must be taken for what they fairly teach within their four corners.

Lacey teaches twisting together wires to form a handle. Lin teaches a different approach in which what appears to be a ferrule is used to bind the wires together. Neither Lacey nor Lin teaches

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using a tubular hollow body in which the members are affixed and an apertured end cap closing one end of the tubular hollow body.

It is respectfully submitted, that there is no suggestion in either Lacey or Lin that the structures of the two devices can be combined as is suggested by the Examiner. Furthermore, it is not seen how any combination of the two references would, show, teach or anticipate the novel structure of claim 1 or any of the dependent claims.

It should be noted that a failing of the structure of the Lacey patent is that merely twisting the wires together may result in a structure in which the wires work loose over time. Lacey has apparently tried to remedy this problem by wrapping the bundle of twisted wires with another smaller binding wire as shown in the single drawing, however, Lacey does not describe this binding wire in the specification.

In contrast, applicant teaches the use of a hollow tubular body to secure the wires together, in combination with an apertured end cap through which the wires extend, and means cooperating with the tubular hollow body for securing the end portions of the flexible fingers within the tubular hollow body.

The Beran reference is cited by the Examiner as showing tip coverings. However, since independent claim 1, does not show, teach or make obvious applicant's novel structures, the addition of the Beran reference with respect to dependent claim 7, does not render claim 7 obvious.

The Examiner is thanked for the thoroughness of his examination. Reexamination and reconsideration are requested. It is further requested that the claims be allowed and that this application be passed to issue.

If the Examiner is of the opinion that further communication would advance prosecution of this application, the Examiner is invited to call the undersigned at 602-463-2010.

Respectfully submitted,



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CHANGES TO CLAIMS

CLAIM 1 (AMENDED). A massage device for the head or scalp, comprising:
a handle portion[,]; and
a plurality of flexible fingers extending from the handle portion, and each having a free end;
said handle portion comprising a tubular hollow body, a second end cap secured to and closing one end of said tubular hollow body, said second end cap having an aperture therethrough, said plurality of flexible fingers extending through said aperture, each flexible finger of said plurality of flexible fingers including an end portion secured in said tubular hollow body,
said handle portion further comprising means cooperating with said tubular hollow body for securing each flexible finger end portion within said tubular hollow body.

CLAIM 2 (AMENDED). [The] A massage device in accordance with claim 1, wherein[,];
[the plurality of] each of said flexible fingers is resiliently deformable.

CLAIM 7 (AMENDED). [The] A massage device [of] in accordance with claim 1,
wherein[,];
each of said [plurality of] flexible fingers [has] comprises a covering disposed on [a] the
tip of each free end.

CLAIM 9 (AMENDED). [The] A massage device [of] in accordance with claim 1, [further
comprising] wherein:
said means comprises a solid insert member disposed in said tubular hollow body, for
retaining each said flexible finger end portion [of the plurality of flexible fingers] therein by
compression force.

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